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Copyright Royalty Board

[Docket No. 2013-6 CRB DD 2009-2011 (MWF)]

Distribution of the 2009, 2010, and 2011 Digital Audio Recording Technology Royalty Funds for the Musical Works Funds

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges announce the commencement of a proceeding to determine the distribution of the digital audio recording technology royalty fees in the 2009, 2010, and 2011 Musical Works Funds. The Judges also announce the date by which a party who wishes to participate in this proceeding must file its Petition to Participate and the accompanying filing fee, if applicable.

DATES: Petitions to Participate and the filing fee, if applicable, are due no later than [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: Interested claimants must submit petitions to participate and the filing fee, if applicable, identified by docket number 2013-6 CRB DD 2009-2011 (MWF), by any of the following methods:

CRB's electronic filing application: Submit comments online in eCRB at <https://app.crb.gov/>.

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board,

P.O. Box 70977, Washington, DC 20024-0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue SE, Washington, DC 20559-6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue SE, Washington, DC 20559-6000.

Instructions: Unless submitting online, claimants must submit an original, five paper copies, and an electronic version on a CD. All submissions received must include the board name and docket number. All submissions received will be posted without change to eCRB on <https://www.crb.gov> including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/> and search for docket number 2013-6 CRB DD 2009-2011 (MWF). For documents not yet uploaded to eCRB (because it is a new system), go to the agency website at <https://www.crb.gov/> or contact the CRB Program Specialist.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by phone at (202) 707-7658 or by e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Audio Home Recording Act of 1992 ("AHRA"), Public Law No. 102-563, requires manufacturers and importers to pay royalties on digital audio recording devices

and media that are distributed in the United States. 17 U.S.C. 1003. These royalties are deposited with the Copyright Office for further distribution to eligible claimants. 17 U.S.C. 1005, 1007. Royalties are divided into two funds: the Sound Recordings Fund (66 2/3%) and the Musical Works Fund (33 1/3%). These fees in turn are allocated to specific subfunds. 17 U.S.C. 1006(b). The Musical Works Fund, which is the subject of this notice, is divided equally between the Music Publishers Subfund and the Writers Subfund. 17 U.S.C. 1006(b)(2).

Distribution of these fees may occur in one of two ways. The interested copyright parties within each subfund may negotiate the terms of a settlement as to the division of royalty funds. If, after any such agreements, funds remain in dispute, the Copyright Royalty Judges may conduct a proceeding to determine the distribution of the royalties that remain in controversy in each subfund. 17 U.S.C. 1006(c) & 1007(c).

On February 4, 2014, the Judges issued an order granting certain claimants' (*i.e.*, Broadcast Music, Inc., the American Society of Composers, Authors and Publishers, SESAC, Inc., and the Harry Fox Agency, Inc.) request for 95% of the Digital Audio Recording Technology ("DART") Musical Works Funds royalties for 2009 through 2011. *Order Granting Claimants' Request for Partial Distribution of 2009 through 2011 DART Musical Works Funds Royalties, Docket No. 2013-6 CRB DD 2009-2011 (MWF)*.

On March 16, 2017, the settling claimants¹ filed a motion requesting that the Judges commence a proceeding to determine the distribution of the funds for 2009, 2010, and 2011. The settling claimants request that the Judges publish a notice in the *Federal*

¹ One of the settling claimants, The Harry Fox Agency LLC, was formerly The Harry Fox Agency, Inc.

Register to 1) announce commencement of a proceeding, 2) request comments on the existence of controversies and petitions to participate, and 3) apprise parties of filing fee requirements and small claims procedures pursuant to 17 U.S.C. 803(b)(1) and 1007(c). Motion at 1-2. The settling parties have not represented that they have reached an agreement with non-settling claimants. Therefore, the Judges conclude that a controversy exists with respect to DART Musical Works Funds for royalty years 2009, 2010, and 2011.

By this notice, the Judges grant the settling claimants' Motion and announce the commencement of a proceeding to determine the proper distribution of DART Musical Works Funds (both the Musical Publishers Subfund and the Writers Subfund) for royalty years 2009, 2010, and 2011. The Judges granted the settling claimants' request for partial distribution pursuant to Section 801(b)(3)(C) of the Copyright Act, which authorizes the Judges to order partial distributions notwithstanding the existence of ongoing controversies. Consequently, all DART Musical Works funds for royalty years 2009, 2010, and 2011 remain in dispute, notwithstanding the 95% distribution to the settling claimants. All settling claimants agreed, at the time of the partial distribution, to repay any potential overpayment.

Commencement of Proceeding

Consistent with 17 U.S.C. 804(b)(8), the Judges determine that, for the reasons stated above, a controversy exists with respect to the distribution of the 2009, 2010, and 2011 DART Musical Works Funds royalties for the Music Publishers Subfund and the Writers Subfund.

Petitions to Participate

Petitions to Participate must provide all of the information required by 37 CFR 351.1(b)(2). Participants also must identify **by year** each subfund in the Musical Works Fund to which they are asserting a claim (*i.e.*, Music Publishers or Writers, or both). Petitions to Participate submitted by interested parties whose claims do not exceed \$1,000 must contain a statement that the party will not seek a distribution of more than \$1,000. 37 CFR 351.1(b)(4). No filing fee is required for such parties. Interested parties with claims exceeding \$1,000, however, must submit a filing fee of \$150 with their respective Petitions to Participate, or the petition will be rejected. **CASH WILL NOT BE ACCEPTED.** Parties filing online through eCRB must pay by credit card. All other parties must pay the filing fee with a check or money order made payable to the “Copyright Royalty Board” and mailed or delivered with a paper claim form, as described in the “Addresses” section above. If a check is returned for lack of sufficient funds, the corresponding Petition to Participate will be dismissed.

Any participant that is an individual may represent herself or himself. All other participants must be represented by counsel. In accordance with 37 CFR 350.2 (Representation), only attorneys who are members of the bar in one or more states or the District of Columbia and in good standing will be allowed to represent parties before the Copyright Royalty Judges. The Judges will address further procedural matters, including scheduling, after Petitions to Participate have been filed.

Intention to Conduct a Paper Proceeding

In accordance with Section 803(b)(5)(B) of the Copyright Act, the Judges find it

appropriate to conduct a paper proceeding in this matter in light of the relatively modest amount of royalties in dispute and the anticipated small number of non-settling claimants. In such proceedings, the Judges determine issues solely on the basis of the filing of a written direct statement by each participant, a response of an opposing participant, and one additional response from the participant. 17 U.S.C. 803(b)(5). Any party wishing to comment on the Judges' intention to conduct a paper proceeding should include such comments in its Petition to Participate.

Dated: August 29, 2017

Jesse M. Feder,
U.S. Copyright Royalty Judge.

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